

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Application of)	MB Docket No. 22-76
)	NAL/Acct. No. MB-202241410006
The Marion Education Exchange)	FRN: 0023109846
)	
For Renewal of License for)	Facility ID No. 193826
Station WWGH-LP)	File No. 0000115702
Marion, Ohio)	

ORDER OF DISMISSAL

Adopted: August 16, 2022**Released: August 16, 2022**

1. This Order follows from a prior Order in the above-captioned proceeding that directed the Marion Education Exchange (MEE), licensee of Station WWGH-LP, Marion, Ohio, to cause an attorney to file a Notice of Appearance in this proceeding on its behalf by July 27, 2022. The Presiding Judge indicated in that Order her intention to dismiss this matter if a valid Notice of Appearance was not filed on or before that date.¹ Because no appearance was submitted in response to that Order, this hearing proceeding is dismissed with prejudice as detailed below.

Failure of Appearance

2. Section 1.221(c) of the Commission's rules, 47 CFR § 1.221(c), requires that, in order to avail themselves of the opportunity to be heard, applicants in a hearing proceeding or their attorney must file a written appearance within 20 days of the mailing of the order designating the matter for hearing. That Notice of Appearance is to include a statement that the applicant will present evidence on the matters specified in the designation order and will appear before the presiding officer as required. If a Notice of Appearance is not filed in a manner consistent with the rule, the rule provides that the underlying application will be dismissed with prejudice for failure to prosecute.

3. At the outset of this hearing proceeding, Attorney George M. Wolfe filed a timely Notice of Appearance indicating that he would be representing MEE.² A few weeks after the initial status conference took place, however, Mr. Wolfe moved to withdraw as MEE's counsel, citing MEE's failure to communicate with him.³ On May 31, 2022, the Presiding Judge granted Mr. Wolfe's motion to withdraw from the case, provided that he immediately notify MEE of its pending discovery obligations, and that he submit a statement in the record indicating to whom he

¹ *The Marion Education Exchange*, Order Rejecting Provisional Notice of Appearance, MB Docket No. 22-76, FCC 22M-23 (ALJ July 20, 2022) (*Order Rejecting Provisional Appearance*) at para. 5.

² George M. Wolfe, *The Marion Education Exchange*, Notice of Appearance, MB Docket No. 22-76 (filed Mar. 14, 2022).

³ Motion of George M. Wolfe to Withdraw as Counsel, MB Docket No. 22-76 (filed May 16, 2022).

provided that notice.⁴ He did so that day, identifying Shawn Craft as MEE's representative.⁵ The *May 31 Order* directed that a legal representative file a new appearance on MEE's behalf within 20 days.⁶ On June 20, 2022, MEE filed a Notice of Appearance indicating that it would be representing itself in the hearing.⁷ The Presiding Judge declined to accept that appearance pursuant to section 47 CFR § 1.21(d) of the Commission's rules, 47 CFR § 1.21(d), which does not permit a corporate entity to self-represent unless specifically allowed to do so by the Presiding Judge. She did, however, provide MEE an additional 20 days to retain counsel.⁸ On the 20th day, Attorney Charles R. Naftalin submitted a "Provisional Notice of Appearance" asking that the proceeding be suspended until September 30 while he considered whether to take the case.⁹ By Order dated July 20, 2022, the Presiding Judge rejected Mr. Naftalin's pleading, but provided an additional seven days for an attorney to file an appearance on MEE's behalf.¹⁰ No appearance was filed in response.

Contentions of the Parties

4. On July 26, 2022, Shawn Craft, who is President of MEE, filed a letter in the Commission's Electronic Comment Filing System (ECFS) indicating that MEE attempted to retain alternative counsel but has been unable to do so. He claims that MEE's previous attorney, Mr. Wolfe, did not inform MEE that he was withdrawing from the case, and that MEE never received the Enforcement Bureau's discovery requests. Mr. Craft submits that his station is a 100-watt low-power FM without significant financial resources and asks for a referral to an attorney that will take its case *pro bono*. He indicates that the station benefits its local community and will continue as an internet-only operation should its license not be renewed. Mr. Craft asserts that MEE did not intend to mislead the Commission, and asks that the case be dismissed, or perhaps settled with the payment of a fine. He also requests that the station be allowed to remain on the air until the end of the year.¹¹

5. The Enforcement Bureau responded on July 28, 2022. It submits that despite the Presiding Judge giving MEE three chances to obtain new counsel, it has not done so. Accordingly, it argues, this proceeding should be dismissed with prejudice in accord with section

⁴ *The Marion Education Exchange*, Order, MB Docket No. 22-76, FCC 22M-17 (ALJ May 31, 2022) (*May 31 Order*).

⁵ Gorge M. Wolfe, Notice, MB Docket No. 22-76 (filed May 31, 2022).

⁶ *May 31 Order* at para. 2.

⁷ Shawn Craft, *The Marion Education Exchange*, Notice of Appearance, MB Docket No. 22-76 (filed June 20, 2022).

⁸ *The Marion Education Exchange*, Order, MB Docket No. 22-76, FCC 22M-20 (ALJ June 24, 2022) (*June 24 Order*) at paras. 9-10.

⁹ Charles R. Naftalin, Provisional Notice of Appearance of Counsel, MB Docket No. 22-76 (filed July 14, 2022); Charles R. Naftalin, Motion in Support of Provisional Notice of Appearance of Counsel, MB Docket No. 22-76 (filed July 14, 2022).

¹⁰ *Order Rejecting Provisional Appearance* at para. 5.

¹¹ *The Marion Education Exchange*, Letter from Shawn Craft, MB Docket No. 22-76 (filed July 26, 2022). This letter was not served on the Enforcement Bureau, nor were courtesy copies provided to the Presiding Judge and her Special Counsel, as required by the Commission's rules and previous orders in this proceeding. See 47 CFR §§ 1.210, 1.211; *The Marion Education Exchange*, Initial Case Order, MB Docket No. 22-76, FCC 22M-07 (ALJ Mar. 18, 2022); *The Marion Education Exchange*, Order Summarizing Initial Conference, MB Docket No. 22-76, FCC 22M-11 (ALJ Apr. 21, 2022) (*Order Summarizing Initial Conference*).

1.221(c) of the Commission's rules, 47 CFR § 1.221(c). By repeatedly failing to comply with the Commission's rules and with orders of the Presiding Judge, the Bureau contends, MEE has demonstrated that it is not likely to fully or timely participate in this case going forward. Moreover, it argues, there is no basis for the Presiding Judge to grant MEE's request that the proceeding be dismissed and that the station be permitted to continue operating.¹² Not only would such action ignore the order designating this matter for hearing, EB asserts, but "[i]n essence, MEE wants the Presiding Judge to simply render a determination in its favor, without MEE participating in this proceeding, without the development of a thorough record on the designated issues, and without MEE meeting its statutorily proscribed burden of proof."¹³

Media Bureau Hearing Designation Order

6. To illustrate why the Presiding Judge declined to exercise the authority afforded her by section 1.21(d) of the Commission's rules and allow a non-attorney MEE officer to represent the company in the hearing, some background is instructive. This proceeding was initiated by the FCC's Media Bureau on February 23, 2022, to evaluate whether it is in the public interest to grant MEE's renewal application for Station WWGH-LP.¹⁴ MEE bears the burden of proving that its license should be renewed.¹⁵ The issues designated for hearing were based on the Media Bureau's interactions with MEE in the course of seeking complete responses to three Letters of Inquiry it sent to MEE regarding the composition of its Board of Directors.

7. Specifically, on May 21, 2019, the Media Bureau granted an unopposed application for assignment of WWGH-LP to MEE from its previous licensee, Marion Midget Football.¹⁶ The application represented that MEE would have the same Board of Directors as the previous licensee, which it indicated included five individuals, each with 20 percent voting rights – Patti Worcester, Martha Maniaci, Mary Ann Stolarczyk, Betty Compton, and Marge Hazelett.¹⁷ A week later, MEE filed an application for transfer of control of the station, reflecting that Ms. Worcester was resigning from the Board, to be replaced by Shawn Craft.¹⁸ That transfer application was granted on July 11, 2019.¹⁹ MEE filed the above-captioned application for renewal of its license on June 6, 2020.²⁰ In processing that application and considering an Informal Objection thereto, the Media Bureau learned that MEE had filed with the State of Ohio

¹² Enforcement Bureau's Opposition to The Marion Education Exchange's Filing, MB Docket No. 22-76 (filed July 28, 2022).

¹³ *Id.* at 5. MEE filed a letter in ECFS on July 28, 2022, that appears to be in response to EB's Opposition. The Marion Education Exchange, Letter from Shawn Craft, MB Docket No. 22-76 (filed July 28, 2022). Like its letter of July 26, this letter does not appear to have been served on the Enforcement Bureau, nor were courtesy copies provided to the Presiding Judge and her Special Counsel. As indicated previously in this proceeding, the Commission's rules do not allow for replies to oppositions. *June 24 Order* at para. 6 (citing 47 CFR § 1.294(b)). Accordingly, MEE's letter of July 28 will not be considered.

¹⁴ *The Marion Education Exchange*, Hearing Designation Order, Notice of Opportunity for Hearing, and Notice of Apparent Liability for Forfeiture, MB Docket No. 22-76, DA 22-187 (MB Feb. 23, 2022) (*MEE HDO*).

¹⁵ *Id.* at para. 45; 47 U.S.C. § 309(e).

¹⁶ *MEE HDO* at para. 2 (citing *Broadcast Actions*, Public Notice, Report No. 49592 at 1 (MB May 24, 2019)).

¹⁷ *Id.* (citing File No. BALL-20190509AAH at Exh. 12).

¹⁸ *Id.* at para. 3 (citing File No. BTCL-20190528AAN at Exh. 5).

¹⁹ *Id.* (citing *Broadcast Actions*, Public Notice, Report No. 49494 at 4 (MB July 16, 2019)).

²⁰ *Id.* at para. 4 (citing Application File No. 0000115702).

corporate materials that listed a different Board of Directors – Shawn Craft, Linda Sims, Glenn Coble, and Terry Tackett.²¹

8. In light of this discrepancy, and because MEE had not responded to the Informal Objection, the Media Bureau sent MEE a Letter of Inquiry on December 8 2020, seeking more detailed information and documentation regarding MEE’s Board of Directors.²² MEE did not answer by the deadline of January 7, 2021, so the renewal application was initially dismissed, but it was reinstated after MEE responded on February 12, 2021.²³ MEE at that time averred that its Board consisted of the same four individuals it had identified to the State of Ohio, and said that they had served in that capacity since 2019. MEE indicated that the Board members previously identified to the FCC had become ill and/or died.²⁴ To obtain more detailed information about this apparent transfer of control of the license, for which no application had been filed with the FCC, and because MEE had not submitted the documentation sought by the First Letter of Inquiry, the Media Bureau sent MEE a Second Letter of Inquiry on February 26, 2021.²⁵ The Bureau again sought detailed information regarding MEE’s Board of Directors, and instructed MEE to explain the apparent false statement in its original assignment application that the Boards of MEE and assignor Marion Midget Football were the same.²⁶ MEE responded that at the time it filed its assignment application, it believed that previous Board members Worcester, Maniaci, Stolarczyk and Hazelett would be able to continue.²⁷ The response did not mention Ms. Compton, who had been identified as a Board member on the assignment application but who the Media Bureau learned had died 2 ½ years before the application was filed.²⁸

9. Finding that MEE’s response to the Second Letter of Inquiry “raised more questions than it answered,” the Media Bureau sent MEE a Third Letter of Inquiry on March 30, 2021.²⁹ It again directed MEE to file documentation that had previously been requested and sought clarification of statements made in response to the Second Letter of Inquiry. In particular, the Third Letter of Inquiry asked why Ms. Compton, who was the grandmother of one of the station’s general managers, was not mentioned as a former Board member in response to the Second Letter of Inquiry. It also asked why MEE had not filed a *pro forma* transfer of control application when the previously-identified Board members were replaced.³⁰ MEE responded that it didn’t file because it “hoped that some of the original board members might have been able to return,” and noted for the first time that Ms. Compton had died and that her Board position had not

²¹ *Id.*

²² *Id.* at para. 5 (citing Letter from Albert Shuldiner, Chief, Audio Division, to Shawn Craft, Marion Education Exchange, Application File No. 0000115702 (dated Dec. 8, 2020) (First Letter of Inquiry)). The Media Bureau’s Letters of Inquiry and related materials are publicly available as attachments to MEE’s application for renewal, Application File No. 0000115702.

²³ *MEE HDO* at para. 7.

²⁴ *Id.* at para. 8.

²⁵ *Id.* at para. 10 (citing Letter from Albert Shuldiner, Chief, Audio Division, to Shawn Craft, Marion Education Exchange, Application File No. 0000115702 (dated Feb. 26, 2021) (Second Letter of Inquiry)).

²⁶ *Id.*

²⁷ *Id.* at para. 11.

²⁸ *Id.* at para. 8 n.24.

²⁹ *Id.* at para. 13 (citing Letter from Albert Shuldiner, Chief, Audio Division, to Shawn Craft, Marion Education Exchange, Application File No. 0000115702 (dated Mar. 30, 2021) (Third Letter of Inquiry)).

³⁰ *Id.* at nn.45 and 46.

been filled, but did not mention the date of her passing.³¹ After reviewing this information, the Media Bureau found that substantial and material questions of fact exist with respect to MEE's renewal application. Accordingly, unable to conclude that MEE satisfied the standards for license renewal required by section 309(k) of the Communications Act,³² it commenced this hearing to resolve the following issues:

- (a) To determine whether The Marion Education Exchange violated section 73.1015 of the Commission's rules by failing to fully and completely respond to Commission letters of inquiry.
- (b) To determine whether the Marion Education Exchange violated section 1.17 of the Commission's rules by making misrepresentations to, and/or lacking candor with, the Commission both in the application for consent to assignment of the license of WWGH-LP, Marion, Ohio, and in its responses to letters of inquiry sent by the Media Bureau on December 8, 2020, February 17, 2021, and March 30, 2021.
- (c) To determine whether The Marion Education Exchange violated section 73.865 of the Commission's rules by failing to notify the Commission of the *pro forma* transfer of control that appears to have occurred on May 29, 2019, and, if so, whether it did so intentionally.
- (d) To determine, in light of the evidence adduced pursuant to the specified issues, if the captioned application for renewal of license for station WWGH-LP should be granted.³³

Discussion

10. Section 1.21(d) of the Commission's rules, 47 CFR § 1.21(d), provides as follows:

Except as otherwise expressly provided in this chapter, a duly authorized corporate officer or employee may act for the corporation in any matter which has not been designated for hearing and, in the discretion of the presiding officer, may appear and be heard on behalf of the corporation in a hearing proceeding.

As a result, it was acceptable for a corporate officer of MEE to represent it when dealing with the Media Bureau, but once the matter proceeded to hearing before an Administrative Law Judge, MEE was required to retain counsel unless the Presiding Judge specifically permitted a non-attorney officer to appear on its behalf. The Presiding Judge declined to do so in her *June 26 Order* "[i]n light of the course of events thus far in this proceeding, in particular the repeated failure of MEE to adhere to filing deadlines and to familiarize itself with Commission rules and

³¹ *Id.* at para. 14 (quoting Response of The Marion Education Exchange, Application File No. 0000115702 (filed Apr. 13, 2021)).

³² Section 309(k) of the Communications Act, 47 U.S.C. § 309(k), provides that a broadcast station license shall be renewed if the Commission finds that, during the previous license term, (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations of the Communications Act or the Commission's rules; and (c) there have been no other violations of the Communications Act or the Commission's rules which, taken together, would constitute a pattern of abuse.

³³ *MEE HDO* at para. 39.

procedures.”³⁴ The Presiding Judge continues to believe that this matter would not be a useful exercise of the Commission’s time and resources if she were to allow MEE to proceed without counsel. By requesting that the Presiding Judge dismiss this case but permit MEE to continue broadcasting after perhaps paying a fine, MEE evidences a fundamental misunderstanding of the obligations of a licensee *viz-a-viz* the FCC. There is no mechanism in the Commission’s hearing rules to ignore the *MEE HDO* and turn back the clock so that MEE can be more forthcoming with the Media Bureau. Nor is the Commission able to provide or recommend counsel, as MEE has requested.

11. MEE is a nonprofit corporation that holds the license for a low-power FM radio station, a service that was created to allow noncommercial, niche broadcasters to serve their communities within a legal framework.³⁵ Far from being indifferent to that fact, the Media Bureau and the Presiding Judge have afforded MEE significant leeway in pursuing its renewal application.³⁶ The Media Bureau sent three separate Letters of Inquiry to MEE seeking specific documentation and asking targeted questions before designating the matter for hearing when those inquiries failed to elicit definitive responses. Once the matter moved to hearing status, the Presiding Judge could have dismissed this case any number of times when MEE missed deadlines or did not follow Commission rules regarding filing and service of pleadings, but she opted to excuse MEE’s procedural missteps.³⁷ When MEE’s first attorney withdrew from the case, the Presiding Judge ordered him to inform MEE of its obligations to satisfy outstanding discovery requests, and to file a notice in the record of this proceeding indicating that he had done so. She also gave MEE additional time to respond to those discovery requests. Moreover, while the rules allow 20 days after designation for an attorney to file an appearance in a hearing proceeding, she provided MEE more than twice that to find substitute counsel.

12. Ultimately, however, all FCC licensees, regardless of service, have a duty to know and adhere to applicable rules, respond promptly and completely to Commission inquiries, and comply with Commission orders. In the infrequent instance where an application is designated for evidentiary hearing, the rules become more formalized, involving the taking of witness testimony, the introduction of evidence, and the submission of formal pleadings. MEE’s representatives have consistently evidenced an inability or unwillingness to familiarize themselves with Commission rules and procedures in a way that would allow this case to move forward. When a licensee that bears the burden of proof does not fully participate in a hearing, it forfeits its opportunity to show that grant of its application is in the public interest. The Presiding Judge therefore has no choice at this point but to dismiss this hearing proceeding due to MEE’s failure to prosecute its application.

13. Accordingly, pursuant to sections 1.21(d) and 1.221(c) of the Commission’s rules, 47 CFR §§ 1.21(d), 1.221(c), **IT IS ORDERED** that the above-captioned application of The

³⁴ *June 26 Order* at para. 9.

³⁵ *Creation of Low Power Radio Service*, 15 FCC Rcd 2205, 2208 (2000) (“Our goal in creating a new LPFM service is to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities”).

³⁶ *See Order Rejecting Provisional Appearance* at para. 3 (“Recognizing that MEE is a nonprofit organization operating a low-power FM station, [the Presiding Judge] has on several occasions afforded MEE concessions that she would not be inclined to provide a more sophisticated licensee”).

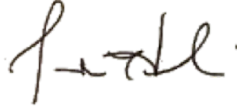
³⁷ In addition to the failure of service described in notes 11 and 13, *supra*, *see Order Summarizing Initial Conference* at para. 3 (failed to file proposed case schedule and missed deadline for response to EB’s Request for Admissions); *May 31 Order* at para. 1 (missed initial deadlines for response to EB’s document request, interrogatories, and motion to compel responses, and did not respond to attorney’s motion to withdraw); *June 26 Order* at para. 6 (made improper *ex parte* submission to the Presiding Judge and the FCC Chairwoman, submitted prohibited reply pleading, filed neither in ECFS).

Marion Education Exchange for renewal of its license for Station WWGH-LP, Marion, Ohio, **IS DISMISSED WITH PREJUDICE** due to the applicant's failure to prosecute.

14. **IT IS FURTHER ORDERED** that the Letter submitted by Shawn Craft on July 28, 2022, on behalf of The Marion Education Exchange **IS STRICKEN FROM THE RECORD OF THIS PROCEEDING** pursuant to section 1.294(b) of the Commission's rules, 47 CFR § 1.294(b).

15. **IT IS FURTHER ORDERED** that this hearing proceeding **IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION



Jane Hinckley Halprin
Administrative Law Judge